

### REMARKS

Applicant thanks the Office for its paper #24 dated Jan. 15, 2003, with its careful consideration of the claimed invention and for its acknowledgment of the receipt of papers 22, 23, and the applicant's Request for Continued Examination and Response of December 6, 2002. Claims 1, 3, 4, 6-8, 10-22 are pending in this application. The Office has rejected claims 1, 3, 4, 6-8, 10-22.

Applicant further wishes to thank Examiner Guarriello for the in-person interview with the Applicant/Inventor and its attorney on April 9, and the consideration of the Examiner in his careful attention to the Inventor's presentation of the prior art and the invention and materials relating thereto.

Applicant has carefully reviewed the Office's correspondence and references, and the comments of the Examiner during the interview and discussion of the references, and has herein amended the claims accordingly and respectfully traversed the Office's paper #24 rejection of the claims in a manner consistent with the discussion during the interview. Applicant believes the claims to be in condition for allowance and requests consideration thereof.

#### Claims Rejections - 35 USC §112

The Office rejected claims 1, 3, 4, 6-8, 10-15, and 17-22 under 35 U.S.C. §112, first paragraph, alleging failure to provide an enabling disclosure of the term "at least equal to" as it appears in the claims, with specific reference to claim 1.

Applicant has herein amended the cited claim 1 to replace the offending term with the term "equal or greater than" regarding the denier of the fill yarn with respect to the warp yarn. As may have been overlooked by the Office, Applicant, as at page 6, beginning at page 6, line 13 of its original application, explains the advantages of an equal (citing 200x200 for warp and fill denier as is the conventional notation) or higher (citing 200x400 for warp and fill denier as is the

conventional notation) denier fill yarn, in combination with a higher end count, for improved penetration resistance. This explanation in the specification expressly supports the language of the amended claim. Applicant respectfully requests reconsideration of claim 1 and claims dependent thereon, specifically claims 3, 4, 10, 11, 14, 17 - 22.

Claim 6 is herein amended to include the scope of the "equal to" language as explained above, but should be similarly absolved of this rejection, along with its dependent claims 7, 8, 12, 13, and 15.

The Office rejected Claims 1, 3, 4, 6-8, 10-15, and 17-22 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Specifically the Office alleges the phrase "at least some of said yarns comprise staple fiber" as ambiguous.

A rejection stating that the claims fail to set forth the subject matter that the applicant regards as the invention is only appropriate where the applicant has stated that the invention is something different from what is defined by the claims (MPEP §2172(a)). There is a presumption that the claims describe the applicant's invention, absent evidence to the contrary. Applicant has herein amended claims 1 and 6 to delete the offending words "at least some of". The remaining text, "said fibers comprise staple fibers", being thus unencumbered, and the claims thereby clarified, Applicant urges reconsideration of claims 1 and 6 and all claims dependent thereon.

#### **Claim Rejections – 35 USC § 103**

Examiner has continued in this RCE prosecution a 35 USC 103(a) rejection citing Dunbar's 5,579,628 as a first reference, based on the Oct. 13, 1992 filing date of the abandoned parent application. The Office has rejected claim 1, 3, 4, 6-8, 10-13, and 17-22 as being unpatentable over US Patent No. 5,579,628 issued to Dunbar.

Applicant reiterates the key aspects of its presentation in its interview differentiating Dunbar and the invention, wherein Applicant described the contribution of *staple* or stretch broken fibers as a principal protective element or component in both warp and fill of a protective fabric having a high end count, as is supported by the specification; whereas Dunbar requires an entangled, *filament* fiber yarn, as expressly described in its patent, to be present in at least one direction as the protective element, while allowing for the use of staple fibers and other variations as tolerable in the other direction, for providing other than a protective benefit. Dunbar does NOT recognize or suggest that stretch broken or staple might be a contributor to the protective quality of the fabric. This is highly notable distinction that when incorporated into the claims as herein and previously amended, particularly independent claims 1 and 6 should cure the rejection.

Applicant notes claim 6 is similar to claim 1 but is yet further limited by the presence of a crimp differential, which is yet another characteristic of a dense weave protective fabric of the invention as is described in the specification and was explained in the interview.

#### **Claim Rejections – 35 USC § 103**

The Office rejected Claims 14 and 15 under 35 USC 103(a) as being unpatentable over US Patent No. 5,579,628 issued to Dunbar in light of U.S. Patent 44,403,012 issued to Harpell.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

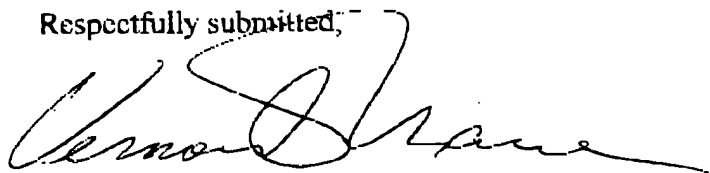
Applicant respectfully asserts that Dunbar, having been thus distinguished by amendments and remarks, is ill suited for combination with Harpell to support the rejection of these claims, and that Harpell alone is likewise inadequate to support the rejection. Applicant respectfully requests the combination be withdrawn and the amended claim set reconsidered.

***Priority Claim***

Applicant requests that the Office acknowledge the claim of priority under 35 USC Sections 120 and/or 121. The present application is a division of U.S. Application No. 09/037,918 filed March 10, 1998.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



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